IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 643 (SS) of 2003
(Old no. 38616 of 1997)

Puran Singh Nayal,
S/o late Pan Singh Nayal,
R/o New Indra Colony,
Lower Mall, Khatiyari,
District-Almora. **……Petitioner.**

Versus

1. Uttar Pradesh Basic Siksha Parishad Allahabad, through its Secretary.
2. Additional Director of Education (Basic), Kumaon Division, Nainital.
3. Basic Shiksha Adhikari, Almora.
4. Siksha Adhikashak, Basic Siksha Urban Area, Almora.
5. Manonj Kumar Joshi, Clerk, O/o Dy. Basic Shiksha Adhikari, Almora.

……..Respondents.

Hon'ble M.M. Ghildiyal, J

Heard Sri U.S. Bhakuni learned counsel for the petitioner Sri Paresh Tripathi, learned Brief Holder for State of Uttarakhand and Smt. Pushpa Joshi, learned counsel for respondent no.5.

By means of this writ petition, petitioner has prayed for the following reliefs.

i *Issue a writ, order or direction, in the nature of Certiorari to quash the order dated 03.11.1997 passed by respondent no. 3 (Annexure no. 7).*

ii *Issue a writ, order or direction, in the nature of Mandamus directing and commanding the respondents not to interfere in the working of the petitioner on the post of Senior Clerk in the pay scale of Rs. 1200-2040.*

iii *Issue a writ, order or direction, in the nature of Mandamus directing and commanding the respondent to pay the salary to the petitioner on the post of Senior Clerk on the pay scale 1200-2040 regularly.*

iv *Issue a writ, order or direction, in the nature of Mandamus directing and commanding the respondents to pay the entire arrears of salary on the post of Senior Clerk with effect from 01.04.1996.*

v *Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

vi *Award the costs of the petition in favour of the petitioner.*

The stand of the petitioner is that petitioner was appointed as Junior clerk on 02.07.1983. Vide order dated 29.03.1996, passed by respondent no. 4, petitioner was directed to look after the work of Senior Clerk, which fell vacant because of retirement of Sri Janardhan Verma, the then Senior Clerk. On 30.07.1996, the Assistant Director of Education (Basic) has given approval for the same and permitted the petitioner to look after the work of Senior Clerk in the office of Education Superintendent, Urban Area, Almora. It was purely temporary arrangement as per order dated 30.07.1996.

In pursuance to the approval given by the Assistant Director of Education, Basic Shiksha Adhikari has granted temporary promotion to the petitioner on the post of Senior Clerk though there is no mention in the order passed by Assistant Director of Education to provide promotion to the petitioner, yet Basic Education Officer, who is not competent authority, has passed order for temporary promotion.

Respondent no. 5 has been promoted by the competent authority as Senior Clerk on 03.11.1997 in pursuance to directions issued by the Board on 16.11.1995 for fixing seniority

of the employees of Shiksha Parishad. It is not disputed that respondent no. 5 is senior to the petitioner.

Learned counsel for the petitioner has submitted that since petitioner was working in Urban Area and respondent no. 5 was working in rural area, respondent no.5 should not have been given promotion.

As per order dated 16.11.1995 passed by the Board the post of Senior Clerk is District Cadre post and as such, the submission of learned counsel for the petitioner is not correct. Petitioner has not challenged the order dated 16.11.1995 passed by the Board.

Learned counsel for the petitioner has submitted that he is still working on the post of Senior Clerk since 01.04.1996 and has not been paid salary for the post of Senior Clerk.

Petitioner may file representation before appropriate authority for redressal of his grievance and the Appropriate Authority shall take decision on the representation of the petitioner in accordance with the provision of Rule 22 B of the U.P. Fundamental Rules of Financial Hand Book Volume 2 to 4 within a period of six weeks' from the date of production of certified copy of this order along with representation.

With this direction, writ petition as well as all the pending applications are finally disposed of. No order as to costs.

(M.M.Ghildiyal, J)

November 20, 2007
SKS